

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

In Re:

DONALD JOHNSON

DONALD JOHNSON,

Plaintiff-Appellant,

v.

COUNTY OF CHAUTAUQUA,

Defendant-Appellee.

DECISION AND ORDER
11-CV-710-A

This bankruptcy appeal is of a grant of summary judgment dismissing an adversary proceeding brought by a Chapter 13 debtor, Donald Johnson, to set aside an *in rem* tax foreclosure as a fraudulent transfer and conveyance. Debtor brought the proceeding to set aside the pre-petition tax foreclosure on his home by the defendant, County of Chautauqua, based upon allegations under 11 U.S.C. § 548(a)(1)(B) and N.Y. Debtor Creditor Law § 273 that debtor received less than reasonably equivalent value for exempt homestead property.

The Court has jurisdiction to hear appeals of final orders of the Bankruptcy Court under 28 U.S.C. § 158(a). A grant of summary judgment pursuant to Bankruptcy Rule 7056 — a determination that no genuine issues of material fact preclude judgment as a matter of law — is a legal conclusion reviewed *de novo*. See *In re Bayou Grp., LLC*, 439 B.R. 284, 296-97 (S.D.N.Y. 2010). The Court reviews

only those arguments presented to the Bankruptcy Court. *Id.* at 296.

The Court has carefully considered the rulings of the Bankruptcy Court, *In re Donald Johnson*, 49 B.R. 7 (Bankr. W.D.N.Y. 2011), the record on appeal, the appellate briefs, and oral argument. Upon *de novo* review, the Court finds debtor had no interest in the homestead exempt from tax foreclosure under N.Y. Civil Practice Law and Rules § 5206(a). Accordingly, the Decision and Order of the Bankruptcy Court granting summary judgment dismissing the adversary proceeding, Dkt. No. 1-28, and the Decision and Order denying reconsideration of dismissal of the adversary proceeding, Dkt. No. 1-31, are affirmed for the reasons stated by the Bankruptcy Court in its Decisions and Orders.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: December 20, 2013